Supreme Court, U.S.
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No. 98-407

In The

Supreme Court of the United States

October Term, 1998

VINCENT C. PIANO, a/k/a Vic Piano
and LOUISE PIANO,

Petitioners,

vs.

ALBERT F. NASUTI, Trustee,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Respondent, Albert F. Nasuti, Chapter 7 Trustee ("the Trustee"), incorporates as his statement of the case the opinion of the Eleventh Circuit Court of Appeals and the Order of the United States District Court, which were attached to the Petition for Writ of Certiorari as Appendices A and C respectively. In addition, the Trustee corrects the following misstatements of fact made by the Petitioners in their statement of the case. Throughout the Petitioners' statement of facts, they falsely portray the state of their indebtedness at the time the fraudulent conveyance occurred. The Petitioners state that they "had no debts," "had no foreseeable future debts," and were not obligated to anyone at the time Mr. Piano transferred his one-half interest in the family home in New York to his wife. These statements are directly contrary to the findings of fact of the bankruptcy court, as affirmed by the district court and the Eleventh Circuit Court of Appeals. All three (3) courts specifically held that Vincent Piano, who faced imminent and severe financial problems, attempted to defeat the claims of known and anticipated creditors by transferring his property to his wife with fraudulent intent.

REASONS FOR DENYING THE WRIT

I.

THIS CASE DOES NOT CONCERN AN IMPORTANT FEDERAL QUESTION.

The issues addressed in the Petition for Writ of Certiorari relate primarily to state law issues, and do not warrant review by the Court. *See Huddleston v. Dwyer*, 322 U.S. 232, 237 (1944) ("ordinarily we . . . do not review, save in exceptional cases, the considered determination of questions of state law

by the intermediate federal appellate courts"). The petition discusses the bankruptcy court's application of New York fraudulent conveyance law. The petition does not present an important federal question for this Court to resolve.

In their first issue, the Petitioners attempt to create a Constitutional issue where none exists. The Petitioners have stated a general principle, making a generic reference to the Fifth Amendment, without identifying any real Constitutional issue for the Court to review. Furthermore, the only legal authority included is a 1932 case from the Surrogate's Court of Kings County, New York, which discusses state law issues. The Petitioners have failed to present an important federal question with their first issue.

On their face, the remaining issues of the petition concern state law issues. The Petitioners request that the Court review the lower courts' interpretation of New York law on fraudulent conveyances. All three (3) lower courts agreed on the interpretation of a clearly decided issue of New York law. The petition does not concern an important federal question.

Finally, the petition does not present a question that is important to the public interest. The facts of this case are unique, the law is decided, and the resolution of this case only affects the parties to the case and those related to the case.

II.

THE PETITION PRESENTS QUESTIONS OF FACT AND THE APPLICATION OF FACTS TO STATE LAW.

The Petitioners seek to challenge the bankruptcy court's finding by clear and convincing evidence that Mr. Piano possessed an actual intent to defraud future creditors when he

transferred his one-half interest in the family home to his wife. The bankruptcy court's findings of fact were affirmed by the district court and the Eleventh Circuit Court of Appeals. Review is not warranted to review the evidence and specific facts of this case. *See Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949) (stating that the Court "cannot undertake to review concurrent findings of fact by two [in this case three] courts below in the absence of a very obvious and exceptional show of error").

III.

PETITIONERS HAVE NOT RAISED THEIR ALLEGED CONSTITUTIONAL CLAIM IN THE COURTS BELOW.

The Petitioners' first issue purports to be a Constitutional issue under the Fifth Amendment. Whether Mr. Piano had a Constitutional right to transfer his property was not raised below, was never briefed or argued by the parties, and no lower court decided the issue. The Petitioners have merely referred to the Fifth Amendment in an attempt to acquire certiorari. No Constitutional claim was preserved in the lower courts. Thus, the petition should not be granted to review this issue. *See Taylor v. Illinois*, 484 U.S. 400, 406 n.9 (1988) ("a generic reference to the Fourteenth Amendment is not sufficient to preserve a Constitutional claim").

CONCLUSION

Throughout the course of the appellate process, the Petitioners have presented briefs in language virtually identical to briefs submitted to the lower court. They have reproduced that brief here. The Pianos' Petition for Writ of Certiorari does not present any important federal questions. The petition relates to state law issues and questions of fact. For the reasons set forth herein, the Trustee respectfully requests that the Court deny the Pianos' Petition for Writ of Certiorari.

Respectfully submitted,

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